

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19-01-2007

Coram :

The Hon'ble Mr. Justice P.SATHASIVAM
and

The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.13804 of 2001

V.Shanmuganathan

... Petitioner

Vs.

1. The Government of India
rep. by its Under Secretary to
the Govt. of India
Ministry of Home Affairs,
North Block, New Delhi.
2. The Director General
Central Industrial Security Force,
Ministry of Home Affairs,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.
3. The Inspector General
O/o. The Inspector General
Central Industrial Security Force / NES
Ministry of Home Affairs,
No.41, Karaya Road, Park Circus,
Calcutta - 17.
4. The Deputy Inspector General
Central Industrial Security Force / NES
Ministry of Home Affairs,
No.41, Karaya Road, Park Circus,
Calcutta - 17.
5. The Deputy Inspector General
Central Industrial Security Force Unit,
OIL Duliajan, Dibrugarh, Assam.

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6. The Enquiry Officer

Assistant Commandant / CISF

CISF Unit Sail Paharpur, Calcutta - 88.

7. The Commandant

CISF Unit Oil Duliajan,

Central Industrial Security Force,

Dibrugarh District, Assam - 786 602.

8. The Enquiry Officer

Deputy Commandant,

CISF Unit Oil Duliajan,

Central Industrial Security Force,

Dibrugarh District, Assam - 786 602.

.. Respondents

Petition is filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records, relating to the order of the first respondent made in No.V-11014/27/99-L&R/CISF/Pers.I/MHA 2668, dated 13.08.1999 and also the enquiry report, dated 11.10.1999, submitted by the sixth respondent and the consequential order, dated 02.02.2000 made in No.V-15014/5/99/VS/Ad.II/1471, passed by the fourth respondent, confirmed in Ref.No.V-15099/NES/LD/APL/03/2000/10249, dated 07.11.2000 by the third respondent and in Ref.No.V-11014/27/1999-L & R/1516, dated 24.05.2001 by the second respondent and to quash the same and direct the respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner

: Mr.G.Ethirajulu

For Respondents

: Mr.S.Udayakumar, SCGSC

O R D E R

(Order of the Court was made by S.TAMILVANAN, J.)

Writ of certiorarified mandamus is preferred by the petitioner seeking to call for the records relating to the order, No.V-11014/27/99-L&R/CISF/Pers.I/MHA 2668, dated 13.08.1999, passed by the first respondent, so far, it is against the petitioner and the enquiry report, dated 11.10.1999, submitted by the sixth respondent and the consequential order, dated 02.02.2000 made in No.V-15014/5/99/VS/Ad.II/1471, passed by the fourth respondent, confirmed in Ref.No.V-15099/NES/LD/APL/03/2000/10249, dated 07.11.2000 by the third respondent and in Ref.No.V-11014/27/1999-L & R/1516, dated 24.05.2001 by the second respondent and quash the same and direct the respondents to reinstate the petitioner in service with all attendant benefits.

2. It is not in dispute that the petitioner was appointed as Assistant Sub Inspector (Clerk / Typist) in the Central Industrial Security Force (herein called as CISF), by way of direct recruitment in the year 1976 and thereafter, promoted to the rank of Inspector in the year 1990. While, he was working as Inspector in the Office of Assistant Inspector General / ESTT, New Delhi, on administrative grounds, by order dated 10.12.1993, he was transferred from CISF Head Quarters to CISF Unit, Oil Duliajan (Assam) and movement order, dated 13.12.1993 was issued by the Assistant Commandant / HQ.Estt, by his office proceedings and the petitioner was directed to report duty on or before 28.12.1993, but he did not join duty on the specified date.

3. According to the petitioner, on 06.12.1993, he met with an accident at New Delhi, due to which complications arose and hence, he moved to Chennai for treatment. According to him, he had sent leave application, enclosing medical certificate, issued by the Government Doctor, advising complete bed rest, due to severe internal injuries and other complications. Subsequently, he received charge memorandum, dated 21.08.1995, treating the medical leave as unauthorised absence. The charge framed against him was as follows :

"Gross misconduct, indiscipline and dereliction of duty in that No.7639021 Inspector, (Min). V.Shanmuganathan while functioning as Inspector / Min. at CISF Hqrs posted at CISF Unit Oil Duliajan and SOS from CISF Hqrs. w.e.f. 13.12.1993 (FN) failed to join duty at CISF Unit, Oil Duliajan on 28.12.1993 on expiry of his joining time and is unauthorisedly overstaying the joining time till date. "

4. As per the enquiry report, dated 19.07.1997, submitted by the eighth respondent, it was held that the charge framed against the petitioner was not proved and as per the proceedings, dated 31.07.1997 of the seventh respondent, the Commandant, CISF Unit, Oil Duliajan, by his proceedings, in No.V-15014/Maj/Vs/Oil/Disc/97-2468, dated 31.07.1997, the petitioner herein was exonerated from the above charge. Pursuant to the same, on 10.04.1996, the petitioner joined duty in the office of the Deputy Inspector General, CISF Unit, Oil Duliajan. But, subsequently, the fifth respondent herein, by his proceedings dated 12.03.1998, suo moto reviewed the earlier order, dated 31.07.1997, passed by the seventh respondent and proposed to inflict punishment of withholding of one increment for a period of three years with cumulative effect and informed that the entire period of OSL to be regularised as 'DIES NON' and also issued a show cause notice calling upon the petitioner to make his representation within 15 days from the date of receipt of the show cause notice, for which the petitioner submitted his explanation on 25.03.1998. The fifth respondent subsequently confirmed the proposed punishment, by

his office proceedings dated 30.03.1998. Aggrieved by the same, the petitioner herein preferred revision before the first respondent, through proper channel. The first respondent, by his order, dated 13.08.1999, set aside the order passed by the fifth respondent, but issued direction, as the competent authority to conduct " de novo enquiry" in respect of the petitioner from the stage of conclusion of the evidence, in order to re-appreciate the evidence on record. Pursuant to the same, the fourth respondent, appointed the 6th respondent as Enquiry Officer to conduct de novo enquiry, by his order dated 07.09.1999.

5. According to the petitioner, the sixth respondent without analysing the evidence on a proper, perspective, merely on surmises and conjecture held that the charge levelled against the petitioner had been proved, by his enquiry report, dated 11.10.1999, but no punishment was proposed in the said communication. Though the petitioner had submitted his detailed explanation on 27.11.1999, the fourth respondent herein, having agreed with the findings of the enquiry officer, the sixth respondent, awarded penalty of removal of the petitioner from service by his office proceedings dated 02.02.2000. Aggrieved by the same, the petitioner herein preferred an appeal before the third respondent, on 08.05.2000. According to the petitioner, the third respondent, without considering the legal submission made by the petitioner, dismissed the appeal preferred by the petitioner, by his order, dated 07.11.2000, made in No.V-15099 / NES/L&D/APL/03/2000/10249, against the said order, the petitioner filed revision on 11.12.2000 before the second respondent, but the second respondent dismissed the revision petitioner by his order, dated 24.05.2001, made in No.V-11014/27/1999-LR/1516. Aggrieved by the same, the petitioner has filed the writ petition, challenging the above said impugned orders.

6. Heard Mr.G.Ethirajulu, learned counsel for the petitioner and Mr.S.Udayakumar, learned Senior Central Government Standing Counsel for the respondents.

7. Learned counsel for the petitioner questioned the impugned orders passed by the respondents on three grounds.

a. According to him, having held that the order of suo moto review passed by the fifth respondent against the petitioner, as without jurisdiction, the first respondent should have allowed the revision without ordering for de novo enquiry and as such the order of the first respondent, for de novo enquiry is contrary to law.

b. The finding of the second enquiry officer, the sixth respondent herein, is perverse and contrary to the evidence and hence not sustainable in law.

c. The punishment of dismissal of the petitioner from service, imposed by the fourth respondent, confirmed by the appellate authority, the third respondent and revisional authority, namely, the second respondent is disproportionate, exorbitant and not sustainable in law.

8. The first contention of the petitioner is that the order for de novo enquiry passed by the first respondent is contrary to law, since the first respondent in his order, dated 13.08.1999 has held that no authority in CISF can suo moto review an order, passed by the disciplinary authority, as no such powers are vested in any authority in CISF and accordingly, set aside the order passed by the fifth respondent.

9. The first respondent has further observed in the order, dated 13.08.1999, that there was a lot of discrepancy in the medical papers submitted by the petitioner, as pointed out by the fifth respondent in the show cause notice, dated 12.03.1998, served on the petitioner. As per the operative portion of the order passed by the first respondent, it is stated that being the competent authority, in exercise of the power conferred under Section 9 (3) of CISF Act, 1968 r/w 49 of CISF Rules, 1969, the first respondent has set aside the order, dated 30.03.1998 passed by the fifth respondent and being the competent authority, the first respondent ordered that de novo enquiry might be conducted, in respect of the petitioner from the stage of conclusion of evidence. The said order reads as follows :

" The competent authority in exercise of powers conferred under Section 9 (3) of CISF Act, 1968 read with Rule 49 of CISF Rules, 1969, hereby set aside the order dated 30.03.1998 passed by the DIG, CISF Unit, OIL, Duliajan. The competent authority further orders that de novo enquiry may be conducted in respect of the petitioner from the stage of conclusion of the evidence. The enquiry authority will submit fresh report after careful appreciation of the evidence held on record. The Disciplinary Authority will take appropriate action on considering the enquiry report, as per laid down procedure."

10. With regard to the competency of suo moto review, the Division Bench of this court in S.Goparam v. I.G., Central Industrial Security Force, reported in (2006) 4 MLJ 274 has held as follows:

"9. The above provision makes it clear that only the Central Government has the power to review and pass appropriate order including modifying the order of the Disciplinary Authority. Inasmuch

as the petitioner had not preferred any appeal against the order of the Disciplinary Authority, in the light of sub-section 3, the second respondent did not have the power under the said provision to take up suo moto review, hence, the proceedings were without jurisdiction."

11. The first respondent, by his order, dated 13.08.1999, while setting aside the suo moto review order passed by the fifth respondent, has also observed that for passing an order of suo moto review, no such powers are vested with the fifth respondent or any other authority in CISF and accordingly, held that the order passed by the fifth respondent, as without jurisdiction and the consequential proceedings, whereby punishment imposed on the basis of the suo moto review was also rightly set aside by the first respondent. The first respondent, while setting aside the order passed by the fifth respondent, has not set aside the final order, dated 31.07.1997, passed by the seventh respondent, whereby the petitioner had been exonerated from the charge, but, first respondent ordered for de novo enquiry. Further, it is seen that the first respondent has ordered de novo enquiry, without finding fault with any procedural irregularity or illegality committed by the enquiry officer, the eighth respondent, in conducting the enquiry proceedings.

12. According to Mr.G.Ethirajulu, learned counsel for the petitioner, the first respondent having held that there was some discrepancies in the medical papers submitted by the petitioner, ought to have given sufficient opportunity to him to prove the validity of the same, by giving liberty to let in oral evidence, and also for examining the Doctor, who issued the medical certificates. But, the first respondent, without pointing out any patent irregularity or illegality in the enquiry proceedings conducted by the previous enquiry officer, ordered de novo enquiry from the stage of conclusion of evidence. It is not in dispute that the latin term de novo means from the beginning. As per, de novo enquiry, the departmental enquiry has to be commenced afresh and hence, without any patent procedural irregularity or illegality, de novo enquiry cannot be ordered by the authority.

13. Under Section 9 (3) of CISF Act, 1968, de novo trial was ordered by the first respondent. Section 9 (3) of CISF Act, 1968 reads as follows :

" 9 (3) The Central Government may call for and examine the record of any proceeding under section 8, sub-section (2), sub-section (2A) or sub-section (2B) of this section and may make such inquiry or cause such inquiry to be made and

subject to the provisions of this Act, may pass such order thereon as it thinks fit. Provided that no order imposing an enhanced penalty under sub-section (2) or sub-section (3) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order."

Sub Section (2A) and (2B) have been inserted as per the amendment made in the Act, which came into force with effect only from 29.12.1999 and therefore, the same is not applicable for the facts and circumstances of the case on hand.

14. Mr.S.Udayakumar, learned Senior Central Government Standing Counsel would contend that de novo enquiry was ordered properly by the first respondent, considering the facts and circumstances of the case and that there is no infirmity or illegality in the order passed by the first respondent.

15. We are of the considered view that the first respondent is empowered under Section 9 (3) of CISF Act, 1968 for passing an order for de novo enquiry, if the same is needed, on the facts and circumstances of the case. As per de novo enquiry, the departmental enquiry proceedings has to be commenced afresh, for which, the competent authority should have found fault with any patent irregularity or illegality in the enquiry conducted, so as to warrant the authority to scrap the enquiry report. The competent authority based on the illegality or patent irregularity found in the enquiry proceedings, order for de novo enquiry, for which, the authority can set aside the enquiry report and order for de novo enquiry, and if there is any error, which could be set right by the authority below, the first respondent can remit back the matter for fresh disposal, for which, an order for de novo enquiry would not be warranted. In the case on hand, the first respondent, without pointing out any patent irregularity or illegality in the enquiry proceeding conducted by the eighth respondent, has passed an order for de novo enquiry and that too from the stage of conclusion of evidence, which is not sustainable in law.

16. The earlier enquiry report, dated 19.07.1997 was submitted by the enquiry officer, eighth respondent, who was in the cadre of Deputy Commandant, CISF Unit, but after de novo enquiry was ordered, sixth respondent in the cadre of Assistant Commandant, CISF Unit, who was an inferior cadre officer to the previous enquiry officer, was appointed as enquiry officer, who has filed the subsequent enquiry report, contrary to the earlier report filed by the Deputy Commandant, CSIF Unit, the eighth respondent herein. The procedure followed in appointing Assistant Commandant, an inferior cadre officer for the de novo enquiry is improper, since the earlier

enquiry report, dated 19.07.1997 was submitted by the Deputy Commandant, CISF Unit. As de novo enquiry was ordered by the first respondent, at least an officer not below the cadre of the earlier enquiry officer could have been appointed by the authorities, since the finding given by an inferior officer cannot prevail over the enquiry report of a superior officer, the same would violate the principles of natural justice. Therefore, we are of the view that the de novo enquiry conducted by the sixth respondent, who is inferior in cadre to the earlier enquiry officer is vitiated by principles of natural justice.

17. The second contention raised by the petitioner is that the finding of the sixth respondent, which was the basis for imposing punishment on the petitioner for removal from the service is perverse, against the evidence on record and hence not sustainable in law.

18. It has been admitted that the petitioner herein was transferred from CISF Head Quarters to CISF Unit, Oil Duliajan (Assam) and the movement order, dated 13.12.1993 was issued by the Assistant Commandant / HQ.Estt, by his office proceedings and the petitioner was directed to report duty on or before 28.12.1993. According to the petitioner on 06.12.1993, while he was travelling in an auto, he met with an accident in New Delhi and sustained serious injuries, for which treatment was taken at CISF dispensary at Head Quarters Office and on account of his ill health, he could not join duty on 28.12.1993 and hence, he sent an application seeking medical leave, with Doctor certificates from his residence at Madras (at present Chennai). It is not in dispute that the fifth respondent, Deputy Inspector General, Duliajan had asked the Group Commandant, CISF, Madras, by his letter, dated 21.04.1994 to verify the fact of the alleged accident and also the health condition of the petitioner and by letter, dated 25.05.1994, the Group Commandant, CISF, Madras - 102, conveyed his response to the fifth respondent, the Deputy Inspector General, CISF Unit, Oil Duliajan, which reads as follows :

"The residence of No.7639021 Inspr/Min.V Shanmuganathan in the given address has been verified. The Inspector detailed for the purpose met Inspr/Min. V.Shanmuganathan and learnt that the latter had met with an accident at New Delhi on 06.12.1993, while travelling in an auto which overturned after dashing against the road divider. He sustained severe injuries on his left shoulder, head, knees and scratches on his back. As his condition was serious and no other vehicle was involved in the accident, no FIR was lodged by anyone and he took treatment from a private doctor there. Meanwhile, he was transferred to

CISF Unit Oil Duliajan. As the injuries did not heal during the joining period he had to continue the treatment and to avail medical rest as advised by the doctor. It came to know that Inspr/Min.V.Shanmuganathan may be recovered by the end of this month and subsequently rejoin duty."

19. Considering the above letter sent by the Group Commandant, CISF Unit, Madras and the explanation submitted by the petitioner along with the medical certificates, the first enquiry officer, namely, the eighth respondent, submitted his report, dated 19.07.1997, whereby held that the charge levelled against the petitioner was not proved and accordingly, based on the enquiry report and also considering the representation made by the petitioner, the seventh respondent, Commandant, CISF Unit, Oil Duliajan, by his order, dated 31.07.1997, exonerated the petitioner from the charge levelled against him. The operative portion of the order, dated 31.07.1997, passed by the seventh respondent reads as follows :

"Hence, agreeing with the findings of the inquiry officer, I find that the charged official is not guilty of charges framed against him. Hence, I "Exonerate" him of the charge framed against him vide charge memorandum No.V-15014/19/VS/95 / 619, dated 21.08.1995. He has further ordered that the period of overstaya from 28.12.1993 to 09.04.1996 shall be regularised separately as per rules."

20. Subsequently, the fifth respondent issued show cause notice, dated 12.03.1998, based on his suo moto review, he passed an order, proposing to inflict punishment of withholding of one increment for a period of three years, with the effect of postponing future increments, for which the petitioner submitted his explanation, then the fifth respondent passed his final order, dated 30.03.1998, based on his suo moto review, it was ordered for withholding one increment for a period of three years and as per the order, the entire period of OSL was ordered to be regularised as 'DIES NON'. The operative portion of the order, dated 30.03.1998 passed by the fifth respondent, Deputy Inspector General, CISF, reads thus :

"I am constrained to form the opinion that the act of overstaya on joining time was a deliberate one in order to avoid the transfer to North East and to cover-up his prolonged absence from duty, he used the medical papers as a fig-leaf with a view to mislead the department. Such

an act of deliberate misconduct, indiscipline and dereliction of duty is not expected from a Senior Inspector. Therefore, while setting aside the final order No.V.15014/Maj/VS/OIL (D)/DISC/97-2468, dated 31.07.1997 passed by Commandant, CISF Unit OIL Duliabaj, I do hereby confirm the imposition of the punishment, as proposed in the Show Cause Notice, dated 12.03.1998. on NO.7639021 Insp/Min V.Shanmuganathan. The entire period of overstayal on joining time (28.12.1993 to 09.04.1996) is to be regularised as DIES NON and non-qualifying service for all purposes, in cancellation of this office USO Pt-II No.334/97, 27/29.09.1997. Necessary recovery will be made accordingly."

21. Aggrieved by the aforesaid suo moto review order passed by the fifth respondent, the petitioner herein preferred revision before the first respondent and the first respondent, by his order, dated 13.08.1999, has held that neither the fifth respondent, nor any other authority in CISF is vested with the power of suo moto review, under the CISF Act, 1968. The order, at paragraph number 6, reads thus :

" On examination of the case of the petitioner, it is observed by the competent authority that according to the existing provision, such powers are not vested in any authority in CISF. The competent authority has further observed that there were a lot of discrepancies in the Medical papers submitted by the petitioner which had been pointed out by the DIG, CISF Unit, OIL, Duliajan in the Show Cause Notice, dated 12.03.1998, served to the petitioner."

22. The first respondent, in exercise of power conferred under Section 9 (3) of CISF Act, 1968 r/w Rule 49 of CISF Rules 1969, has set aside the order, dated 30.03.1998 passed on the basis of suo moto review by the fifth respondent, Deputy Inspector General, CISF, Oil Duliajan and further ordered that de novo enquiry might be conducted in respect of the petitioner from the stage of conclusion of evidence. Pursuant to the order of the first respondent, dated 13.08.1999, the sixth respondent, Assistant Commandant, CISF Unit, Sail Paharpur, Calcutta conducted 'de novo' enquiry and held that the charge was proved against the petitioner.

23. In the enquiry report, dated 11.10.1999 submitted by the sixth respondent, the enquiry officer, namely, the Assistant Commandant, CISF Unit, has given a finding that the very genuineness of the medical certificates produced by the petitioner, charged

official, had raised serious doubt and suspicion and the charged official had also failed to produce any valid document to justify his unauthorised absence from duty to establish the so called accident, met by him in New Delhi and held that the charge is "proved". Based on the finding, the fourth respondent, passed the order, dated 02.02.2000, for removal of the petitioner from service, The operative portion of the order reads thus :

" Accordingly, in commensurating with the gravity of the offence committed by him, I hereby award the penalty of "Removal from service" to No.7639021 Insp / Min. V.Shanmuganathan, to meet the ends of justice as disciplinary authority, in exercising the powers conferred upon me under Rule 29A of CISF Rules, 1969 reads with schedule-II thereof.

The order of removal from service shall be effective from the date of its service upon No.7639021 Insp/Min.V.Shanmuganathan. The entire period of overstayal from joining time (from 28.12.93 to 9.4.96) is regularised as EOL without medical certificate."

24. It is seen from the enquiry report of the sixth respondent that P.W.1, No.7111337 SI / Min.P.M.Gopalakrishnan, CISF Unit, FACT, Udayogamandal, has deposed that medical certificates which were issued by the doctor of the Government General Hospital, Madras were received at CISF H.Qrs, New Delhi along with the case file from Deputy Inspector General, CISF Unit, OIL, Duliajan. As per the enquiry report, it is seen that the fifth respondent, Deputy Inspector General, CISF Unit, OIL, Duliajan, Assam, by his letter No.E-38014/Ad.I/Posting/OSL/94/2033, dated 21.04.1994, had requested the Group Commandant, CISF Unit, Madras, to verify the facts whether the petitioner had really met with an accident or otherwise, and accordingly, the Group Commandant, CISF Unit, Madras sent his report, vide secret letter No.IC-16099/GHM/Ad.V/Misc/94/5433, dated 25.05.1994, with copy thereon to CISF Hqrs amongst others. The enquiry report of the sixth respondent with regard to the same is available at page number 77 of the typed set, which reads as follows :

" In response, Group Commandant, Madras replied vide letter No.IC-16099 / GHM /Ad.V /Misc /94 /5433, dated 25.05.1994, that an inspector was detailed for the purpose who learnt that Inspc/Min.V.Shanmuganathan was met with an accident at Delhi on 06.12.1993 and as the injuries did not heel during the joining period, he had to continue to the treatment and undergo medical rest as advised by the Doctor. It was

also mentioned in that letter that Insp/Min.V.Shanmuganathan might be recovered by the end of May 1994 and subsequently rejoins duty."

25. It is seen from the enquiry report of the sixth respondent that the Group Commandant, Madras, by his reply letter, dated 25.05.1994, had intimated the fifth respondent, Deputy Inspector General, CISF Unit, that it was learnt by him, that the petitioner herein had met with an accident at New Delhi on 06.12.1993 and as the injuries did not heal during the joining period, hence the petitioner had to continue treatment and undergo medical rest, as advised by the Doctor. The Group Commandant, Madras, on the request of the fifth respondent, by his reply letter, dated 25.05.1994 has also intimated that the address of the petitioner herein at Madras was verified and on enquiry, it was learnt that the petitioner had met with an accident at New Delhi, while travelling in an auto which overturned after dashing against the road divider. He sustained severe injuries on his left shoulder, head, knees and scratches on his back. The letter further reads at page numbers 6 of the typed set as follows :

" As his condition was serious and no other vehicle was involved in the accident, no FIR was lodged by anyone and he took treatment from a private doctor there. Meanwhile, he was transferred to CISF Unit OIL, Duliajan. As the injuries did not heal during the joining period, he had to continue the treatment and to avail medical rest, as advised by the doctor. It came to know that Insp/ Min.V.Shanmuganathan may be recovered by the end of this month and subsequently rejoin duty."

26. As per the enquiry report of the sixth respondent, at page number 72 and 73 of the typedset, P.W.I has stated that he remembered that Insp/ Min.V.Shanmuganathan, petitioner herein was found having bandaged and on enquiry, he told that he had met with a road accident, while travelling in auto and further stated that medical certificates, which were issued from Government General Hospital, Madras were received at CISF Headquarters, New Delhi, along with case file from Deputy Inspector General, CISF Unit, OIL, Duliajan. On questioning about the request of permitting him to avail medical rest, as per the advice of medical officer, P.W.I has replied that nothing in this aspect was available on record to know, whether the request was rejected by the competent authority or otherwise.

27. As per the enquiry report of the sixth respondent, P.W.II has replied on question about receipt of medical certificates sent by the petitioner and that he did not give any comments on the validity of the medical certificates, for sanction of medical leave and

further the enquiry report reads at page number 75 has follows :

" On questioned whether the request of Insp/Min.V.Shanmuganathan to avail the medical leave as advised by the Medical Officer was rejected by the Competent authority, P.W.II replied that it is not clear but a call up notice was sent to him on 16.02.1995, directing him to report for duty immediately."

28. As per the said enquiry report, C.W.1 in his cross examination replied as follows :

" On questioned whether the enquiry made through Group Commandant, Madras, about the sickness of Insp/Min.V.Shanmuganathan and the reply thereof have been informed to FHQrs, CW-1 replied in positive."

29. Even as per the evidence recorded by the sixth respondent and the response letter by the Group Commandant, CISF Unit, Chennai, dated 25.05.1994 to the fifth respondent, it is clear that the petitioner herein had met with an accident on 06.12.1993, while travelling in an auto and sustained serious injuries on his left shoulder, head and was taking treatment. The Group Commandant, CISF Unit, Chennai, has clearly stated in his response letter that the condition of the petitioner was serious, as no other vehicle was involved in the accident, no FIR was lodged by any one. Admittedly, there is no contra evidence against the petitioner. It is not the case of the respondents that the Group Commandant, CISF, Madras, by his response letter, dated 25.05.1994, had furnished incorrect or false information to the fifth respondent. The evidence of the other witnesses available in the enquiry report would also clearly show that the petitioner had met with an accident on the alleged date and was taking treatment, due to which, he could not join duty on the specified date. There is no contra evidence to show that the petitioner remained absent on the pretext of sickness, falsely, with the intention not to join in a new station, as directed by the authorities in the transfer order.

30. Even as per the findings, of the sixth respondent, in the enquiry report, he has raised only doubt and suspicion with regard to the genuineness of the medical certificates produced by the petitioner, but found that the charge against the petitioner is proved, even in the absence of any contra evidence against the petitioner.

31. The first enquiry officer, the eighth respondent, being the Deputy Commandant, CISF Unit, by his enquiry report, held that the

charges levelled against the petitioner has not been proved. Considering the enquiry report submitted by the Deputy Commandant, CISF, the seventh respondent, Commandant, CISF, by his final order, dated 31.07.1997 held that the petitioner was not guilty of the charge framed against him and accordingly, exonerated the petitioner from the charge framed against him, vide charge memorandum No.15014/19/VS/95/619, dated 21.08.1995.

32. The finding of the first enquiry officer, Deputy Commandant was not scrapped by any appellate authority and the second enquiry officer, the sixth respondent, an Assistant Commandant, CISF, by his enquiry report, dated 11.10.1999, contrary to the earlier report submitted by the eighth respondent, has found that the charge framed against the petitioner is proved. In order to reverse the finding of the Deputy Commandant, it is seen that there is no substantive evidence or materials or circumstances available in the enquiry report, dated 11.10.1999 submitted by the sixth respondent, the Assistant Commandant, CISF Unit. Further, the finding of the sixth respondent, as discussed earlier would show that it is against the evidence available on record. When the finding of the enquiry officer is against the evidence or without evidence, it has to be construed as perverse finding and accordingly, we are of the considered view to hold that the finding given by the sixth respondent as perverse, since, the finding is contrary to the evidence available on record.

33. The third contention raised by the petitioner is that the punishment of removal of the petitioner from service, imposed by the fourth respondent, confirmed by the third respondent, the appellate authority and the second respondent, the revisional authority, is disproportionate, exorbitant and not sustainable in law.

34. It is seen that the fifth respondent, Deputy Inspector General, CISF Unit, OIL, Duliajan by his suo moto review order, dated 30.03.1998, passed in No.V/ 11013/REVIEW/(DIG-28)/98-PA-1199, available at page number 53 of the typed set, though the same was set aside by the first respondent, subsequently, by the order, dated 13.08.1999, had imposed punishment to the petitioner, thereby confirming the proposed punishment in the show cause notice, dated 12.03.1998, ordered for withholding one increment for a period of three years with effect of postponing future increments and the entire period of OSL was regularised as "DIES NON" and further ordered that the period of OSL between 28.12.1993 to 09.04.1996 would be of non qualifying service for all purposes, but strangely, the fourth respondent, the other Deputy Inspector General, CISF/NEZ, Colcutta, a same cadre officer, for the very same charge has awarded the penalty of removal of the petitioner from service. The operative portion of the order passed by the fourth respondent reads as follows :

" Accordingly, in commensurating with the

gravity of the offence committed by him, I hereby award the penalty of "Removal from service" to No.7639021 Insp / Min. V.Shanmuganathan, to meet the ends of justice as disciplinary authority, in exercising the powers conferred upon me under Rule 29A of CISF Rules, 1969 reads with schedule-II thereof.

The order of removal from service shall be effective from the date of its service upon No.7639021 Insp/Min.V.Shanmuganathan. The entire period of overstayal from joining time (from 28.12.93 to 9.4.96) is regularised as EOL without medical certificate."

The said order passed by the fourth respondent, has been confirmed by the appellate authority on appeal and revision, preferred by the petitioner herein, without considering the earlier orders, and the proportionality of punishment.

35. It is seen from the case record, that for the very same charge, though, it was a suo moto review order, the fifth respondent, Deputy Inspector General, CISF Unit, OIL, Duliajan, had imposed punishment withholding of one increment for a period of three years with cumulative effect and also ordered to regularise the period from 28.12.1993 to 09.04.1996 as "DIES NON". Aggrieved by which, the petitioner had preferred revision before the first respondent. The fourth respondent, Deputy Inspector General, CISF Unit / NEZ, has awarded penalty of removal of the petitioner from service for the very same charge. Prior to the de novo enquiry, the first enquiry officer, the eighth respondent had found that the charge framed against the petitioner was not proved and accordingly, the seventh respondent, had exonerated the petitioner from the charge.

36. It is submitted on behalf of the petitioner that having annoyed over the act of petitioner, preferring appeal and revision against the order passed by the respondents, by using the de novo enquiry, and also based on the perverse finding, awarded disproportionate and exorbitant punishment by the fourth respondent, which was confirmed by the appellate authority and revisional authority, though the same was contrary to law.

37. The enquiry report, dated 19.07.1997, submitted by the eighth respondent would reveal the fact that the petitioner could not join duty, as per the transfer order, since he had met with an accident on 06.12.1993, the fact has been verified by the fifth respondent, by his letter, addressed to the Group Commandant, CISF (MHA), Madras, (Chennai), by his letter, dated 21.04.1994 and reply received from the Group Commandant, CISF, Madras, (Chennai), dated 25.05.1994. Considering the enquiry report submitted by the eighth

respondent, the seventh respondent, Commandant, CISF, exonerated the petitioner from the charge levelled against him and he was permitted to join duty and accordingly, he joined duty.

38. It is seen that there was no necessity, which warranted the fifth respondent to suo moto review the order passed by the seventh respondent to impose punishment on the basis of his suo moto review. As found by the first respondent, the fifth respondent, had no authority under the CISF Act, 1968, to pass any order on the basis of suo moto review and thereby impose any punishment and accordingly, the first respondent has rightly set aside the suo moto review order passed by the fifth respondent.

39. In order to pass an order for de novo enquiry, there should be patent irregularity or illegality in the enquiry proceeding conducted by the authority. Here in this case, the first respondent has not pointed out any such patent irregularity or illegality in the enquiry report submitted by the eighth respondent and the consequential order passed by the seventh respondent. Further, if there is any irregularity or error, which had warranted further consideration, the first respondent could have remitted back the case to the authority below, for fresh disposal and could not have ordered for de novo enquiry and that too from the stage of conclusion of evidence, as the same would not be a de novo enquiry.

40. After the de novo enquiry ordered by the first respondent, the authority could not have appointed the sixth respondent, an Assistant Commandant, CISF Unit, who is inferior in cadre to the earlier enquiry officer, the eighth respondent, who was a Deputy Commandant, CISF Unit and being a superior officer to the second enquiry officer.

41. It is seen that there is no evidence or circumstances stated by the second enquiry officer, the 6th respondent to arrive at a different finding and conclusion against the earlier finding and conclusion arrived at by the eighth respondent. Further, the punishment imposed by the fourth respondent, confirmed by the appellate authority and the revisional authority is also exorbitant and not sustainable in law.

42. However, we are of the considered view that the matter need not be remitted back to the respondents for fresh consideration and further, we feel that ends of justice would not be met, if the matter is remitted back to the authorities for fresh disposal, since the orders have been passed, contrary to law and violative of principles of natural justice. Therefore, we are of the considered view that the punishment of dismissal from service imposed on the petitioner by the fourth respondent, confirmed by the appellate authority and the

revisional authority is disproportionate and exorbitant and not sustainable in law and the impugned orders are liable to be quashed and accordingly, the impugned orders passed by the respondents are quashed. However, we hold that the petitioner is not entitled to any backwages, but the period of absence of the petitioner, has to be counted for all service benefits and accordingly, the writ petition is partly allowed. No order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsvn

To

1. The Under Secretary to Government
Government of India
Ministry of Home Affairs,
North Block, New Delhi.
2. The Director General
Central Industrial Security Force,
Ministry of Home Affairs,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.
3. The Inspector General
O/o. The Inspector General
Central Industrial Security Force / NES
Ministry of Home Affairs,
No.41, Karaya Road, Park Circus, Calcutta - 17.
4. The Deputy Inspector General
Central Industrial Security Force / NES
Ministry of Home Affairs,
No.41, Karaya Road, Park Circus, Calcutta - 17.
5. The Deputy Inspector General
Central Industrial Security Force Unit,
OIL Duliajan, Dibrugarh, Assam.

6. The Enquiry Officer
Assistant Commandant / CISF
CISF Unit Sail Paharpur,
Calcutta - 88.

7. The Commandant
CISF Unit Oil Duliajan,
Central Industrial Security Force,
Dibrugarh District, Assam - 786 602.

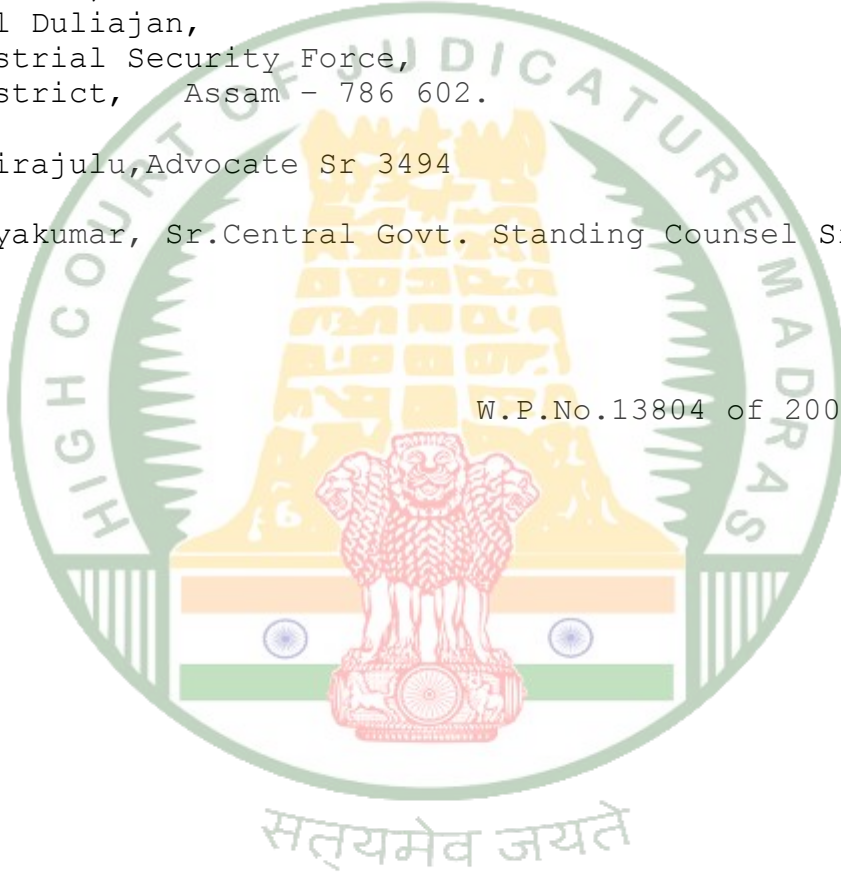
8. The Enquiry Officer
Deputy Commandant,
CISF Unit Oil Duliajan,
Central Industrial Security Force,
Dibrugarh District, Assam - 786 602.

+1cc to Mr.G.Ethirajulu, Advocate Sr 3494

+1cc to Mr.S.Udayakumar, Sr.Central Govt. Standing Counsel Sr 3536

BVR (CO)
km/25.1.

W.P.No.13804 of 2001



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